NOTES OF CASES.

Corporations—Promoters—Partnership Liability to Third Persons.—In Hall Lithographing Co. *v.* Crist, in the Supreme Court of Kansas (October, 1916, 160 Pac. 198), it was held that "all who participate in a project to found a corporation are liable as partners for the debts thereby incurred when the project is abandoned before completion." The court said in part:

"The general verdict was for the defendants. Plaintiff appeals, and the gist of its assignment of errors is the net result—that the defendants, having the liability of partners in this proposed corporation, are permitted to escape their responsibilities. The case was tried on the defendants' theory that unless authority was granted by them to Gunn to contract this debt on behalf of the proposed corporation they were not liable.

The true rule is founded on a very simple philosophy. A number of persons may undertake to accomplish a certain enterprise, be that to build a house, to run a store, or to found a banking corporation. In any such enterprise they are partners. As such they have all the responsibilities of partners so far as their dealings with third parties are concerned. If they offend against each other they have their several legal remedies. But in their dealings with others in furtherance of their common purpose each partner may bind the partnership. John R. Gunn, a partner in their enterprise to found a bank, contracted this debt in the proposed bank's behalf and consequently in defendants' behalf. The stationery and supplies were necessary and pertinent to the proposed corporate business and in furtherance of their common purpose. They are therefore liable to the plaintiff (Walton *v.* Oliver, 49 Kan. 107, 30 Pac. 172, 33 Am. St. Rep. 355; Bank *v.* Sheldon, 86 Kan. 460, 121 Pac. 340; Bank *v.* Sheldon, 96 Kan. 492, 152 Pac. 765).

Are all the defendants liable? That we cannot determine from the record. Those who in any manner participated in the common enterprise to found and establish the bank are liable; and to ascertain that fact the judgment of the district court must be reversed and the cause remanded for a new trial."

Foreign Corporations—Failure to Comply with Statute—Liability of Stockholders as Partners.—In Cunningham *v.* Shelby, in the Supreme Court of Tennessee (October, 1916, 188 S. W. 1147), it was held that stockholders of a foreign corporation attempting to do business in the state without having attempted to comply with the statutory requirements as to foreign corporations, are liable on contracts as partners, although contracting in corporate name, and although the stockholders did not know of such non-compliance with the stat-

utes, since foreign corporations not complying with the state laws have no standing in the courts. The court said in part:

"A direct authority is found in Taylor *v.* Branham (35 Fla. 297, 17 South. 552, 39 L. R. A. 362, 48 Am. St. Rep. 249), in which it was held that a corporation chartered in Tennessee had no right to transact business in Florida without complying with the laws of that state, prescribing certain conditions for the entering of that state by foreign corporations, and that the stockholders who undertook to carry on the business of such foreign corporations were liable as partners. The same principle is found laid down in Mandeville *v.* Courtright (142 Fed. 97, 73 C. C. A. 321, 2 L. R. A., N. S., 1003). In that case it was held that a dental company chartered in New Jersey had no right to carry on its business in Pennsylvania, by virtue of its New Jersey charter, and that its stockholders carrying on such business in Pennsylvania became personally liable as partners. In the case it appeared that an employee of the company fractured a woman's jaw while trying to operate upon her teeth. The stockholders were held liable for damages, as partners.

The general principle is that stated in Carter *v.* McClure (98 Tenn. 109) and Harrill *v.* Davis (168 Fed. 187), that where persons are associated together carrying on a business for profit they are prima facie partners, no matter what name they use, and they cannot escape except by showing that they were a corporation.

The fact that defendants in error dealt with them in their corporate name can avail them nothing (Harrill *v.* Davis, supra; Empire Mills *v.* Alston Grocery Co., Tex. App., 15 S. W. 505, 12 L. R. A. 366, 369, and see note). It does not appear that defendants in error knew that the corporation had not complied with the Tennessee laws. However, we do not think this would have made any difference, since the corporation was without the power of contracting, and as the plaintiffs in error could not bind it, they necessarily bound themselves (Morton *v.* Hart, 88 Tenn. 427).

It should be noted that the principles above announced do not apply to corporations de facto; that is, those which have made a bona fide effort to comply with the provisions of law and have inadvertently failed in some particular, and in good faith have exercised the franchises of such corporation (Merriman *v.* Magiveny, 12 Heisk. 59 Tenn. 494; Swofford Bros. Dry Goods Co. *v.* Owen, 37 Okl. 616, 133 Pac. 193, L. R. A. 1916-C, 189, and note. And see note to Rutherford *v.* Hill, 17 L. R. A. 549)."